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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   UNITED STATES OF AMERICA,

11                   Plaintiff,

12                   v.

13                   CARLOS GARIBAY DEL TORO and  
14                   MAXIMILIANO VIDAL-MEDINA,

15                   Defendants.

CASE NO. CR02-374C

ORDER TO CONTINUE PRE-TRIAL  
MOTIONS DEADLINE AND TRIAL DATE

This matter having come before the Court on the Government's motion to continue the trial date from November 28, 2005 to December 19, 2005 (Dkt. No. 636; Dkt. No. 656), and the Court having considered the arguments presented by all parties, together with the balance of the records and files herein, this Court now finds as follows:

The current trial date is November 28, 2005 and the current motions cut-off date is October 27, 2005. Those dates were scheduled by Order of this Court (Dkt. No. 638) pursuant to a request for a

ORDER - 1

1 continuance by Defendant Carlos Garibay Del Toro (Dkt. No. 628) and a nonopposition by Defendant  
2 Maximiliano Vidal-Medina (Dkt. No. 634).

3 In light of the involvement of the lead attorney for the Government in this case (Douglas B.  
4 Whalley) in another case that has a two- to three-week trial beginning November 29, 2005, the  
5 Government requested a further trial continuance in this matter to December 19, 2005 to preserve  
6 continuity of government counsel (*see* Dkt. No. 636). Mr. Whalley, though not the only prosecutor  
7 involved in this case, is the most familiar with it. He conducted the wiretap, prepared the indictment and  
8 the search warrants, and tried the only other co-defendant to go to trial, Jorge Esquivel-Ortega. Mr.  
9 Whalley withdrew his request to continue after some discussion about the trial date with both defense  
10 counsel (Dkt. No. 654), but then renewed the request after all three parties agreed to December 19, 2005  
11 as an acceptable trial date (Dkt. No. 656).

12 Defendant Carlos Garibay Del Toro is in agreement with the proposed continuance to December  
13 19, 2005 (Dkt. No. 645; Dkt. No. 657), and he has signed a speedy trial waiver through December 31,  
14 2005 (Dkt. No. 645). Defendant Maximiliano Vidal-Medina is also in agreement with the proposed  
15 continuance to December 19, 2005 (Dkt. No. 655), and he has signed a speedy trial waiver through  
16 February 1, 2006 (Dkt. No. 653).

17 The new proposed date of December 19, 2005 for the trial does not appear to prejudice any party.  
18 The Court finds that failure to grant the requested continuance likely would result in a miscarriage of  
19 justice. The Court further finds that the interests of the public and the Defendants in a speedy trial in this  
20 case are outweighed by the ends of justice.

21 Accordingly, IT IS HEREBY ORDERED THAT:

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26 ORDER - 2

The pre-trial motions cut-off date shall be extended to November 10, 2005, with a new trial date of December 19, 2005. The time between the date of this Order and the new trial date shall be excludable time under the Speedy Trial Act pursuant to 18 U.S.C. §§ 3161(h)(8)(A), 3161(h)(8)(B)(i), and 3161(h)(8)(B)(iv).

SO ORDERED this 11th day of October, 2005.

John C. Coyleman

John C. Coughenour  
United States District Judge